

EXHIBIT

45

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NANCY MIRACLE, aka NANCY
MANISCALCO GREEN,

Plaintiff,

vs.

ANNA STRASBERG, as
Administratrix, c.t.a. of
the Last Will and Testament
of MARILYN MONROE,

Defendant.

MAR 31 1993

at 3 o'clock and 10 min. P.M.
WALTER A.Y.H. CHINN, CLERK

CIVIL NO. 92-00605ACK

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on
Tuesday, November 24, 1992, at 10:45 a.m., at Honolulu, Hawaii,

BEFORE:

HONORABLE ALAN C. KAY
Chief United States District Judge
District of Hawaii

APPEARANCES:

JOHN AARON MURPHY JONES, Esq.
1170 N. King Street
Honolulu, Hawaii

Attorney for Plaintiff
Nancy Miracle, aka Nancy
Maniscalco Green;

MILTON M. YASUNAGA, Esq.
Cades, Schutte, Fleming
& Wright
1000 Bishop Street
Honolulu, Hawaii

Attorney for Defendant
Anna Strasberg, as
Administratrix, c.t.a. of
the Last Will and Testament
of Marilyn Monroe.

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1 THE CLERK: Civil No. 92-00605ACK, Nancy Miracle vs.
2 Anna Strasberg. This case is called for plaintiff's motion to
3 continue defendant's motion to dismiss complaint.

4 MR. JONES: Good morning, Your Honor, John Aaron
5 Murphy Jones for the Plaintiff Nancy Miracle, who is not
6 present in court.

7 THE COURT: Good morning.

8 MR. YASUNAGA: Good morning, Your Honor. Milton
9 Yasunaga, attorney for Anna Strasberg, as administratrix of
10 the last will and testament of Marilyn Monroe.

11 THE COURT: Good morning. The Court has just
12 received your memo, looked through it very quickly. I
13 understand that this motion was just set yesterday, so let's
14 proceed.

15 MR. JONES: Thank you, Your Honor.

16 Your Honor, the plaintiffs have requested in their
17 motion a continuance of the defendant's motion to dismiss and
18 the plaintiffs have based their motion on Rule 12, if I can
19 read in part: If on a motion asserting defendants numbered
20 six to dismiss for failure of the pleadings to state a claim
21 upon which relief can be granted, matters outside the
22 pleadings are presented to and not included -- excluded by the
23 Court, the motion shall be treated as one for summary judgment
24 and disposed of as provided in Rule 56 and all parties shall
25 have -- shall be given reasonable opportunity to present all

1 material made pertinent to such motion by Rule 56.

2 Your Honor, the -- as I've had just a brief
3 opportunity to look over the defendant's motion, there are two
4 things that we are requesting: No. 1, we are requesting the
5 probate documents from New York. It's worthy to note that the
6 defendants have introduced a part of the probate documents,
7 which they purport to show that Marilyn Monroe was domiciled
8 in New York at the time of death. We feel that introducing
9 only a part of the record opens the door -- and I'm sorry I
10 don't have a copy of this, Your Honor, but I have here an
11 order approving a merchandising agreement and I only have one
12 copy. (Document handed).

13 THE CLERK: (Document handed).

14 MR. JONES: Your Honor, that document came from the
15 just some of the documents of the probate court of New York
16 that we were able to get ahold of this week. What we are
17 contending is that the estate of Marilyn Monroe went to the
18 probate court, they got an order from that court to do
19 merchandising worldwide. So, basically, what we are saying is
20 that the Court can take judicial notice of the fact that the
21 Court can walk outside of this courtroom and purchase a
22 T-shirt or a sweat shirt with a picture of Marilyn Monroe
23 right down in Waikiki or downtown Honolulu.

24 We are saying that the defendants are doing business
25 in the State of Hawaii for purposes of the long arm statutes

1 and what we are contending is that my client, Nancy Miracle,
2 is entitled to a part of those proceeds that the defendants
3 are making worldwide. We feel that that will establish the
4 jurisdiction of this Court under the State of Hawaii statutes --
5 long arm statutes for us to proceed.

6 Once we have all of the probate documents issued --
7 submitted into the Court, we are then requesting a copy of the
8 will and the death certificate of Marilyn Monroe to show and
9 being offered to show for purposes of domicile as to where
10 Marilyn Monroe was domiciled at the time of her death. Again,
11 the defendants have offered the probate documents to show that
12 she was domiciled in New York, but it is a matter of record
13 that Marilyn Monroe is buried in California, where she resided
14 for many years and has a home.

15 Once we find out where she is domiciled, then we can
16 move to the issue of conflict of laws to determine what state
17 law applies to all of the issues concerned here. There are
18 cases that we have found that where the pretermitted heir is
19 allowed to use state law other than where the decedent is
20 buried or where the case was probated so we feel that we have
21 a right to have the will and the death certificate of Marilyn
22 Monroe, all of these documents are under the control --
23 exclusive control -- of the defendants and we have not been
24 able to get any of them.

25 THE COURT: Well, they're all being probated in New

1 York, right?

2 MR. JONES: Yes, they are.

3 THE COURT: Why aren't you suing there?

4 MR. JONES: The -- Nancy Miracle lives here. She is
5 a resident of the City and County of Honolulu.

6 THE COURT: The estate is being probated in New
7 York.

8 MR. JONES: It had been probated. It's not being
9 probate -- it was probated back in 1962.

10 THE COURT: Well, you are seeking to set that aside,
11 right, to challenge the probate?

12 MR. JONES: No, Your Honor. We are moving under the
13 pretermitted heir statutes and specifically we are not moving
14 to set aside the probate. To set aside the probate the
15 federal court would lose jurisdiction of the entire case,
16 whereas if it -- the case comes under the pretermitted heir
17 statutes, the federal courts are allowed to handle those cases
18 and that would be basically brought up in our motion in
19 opposition -- our memorandum in opposition to their motion.

20 But, as long as we are proceeding under the
21 pretermitted heir statutes, we can proceed in the federal
22 district court; that's quite well established, Your Honor.
23 So, those are the types of documents that we are requesting
24 and the issue of jurisdiction and the issue of domicile re the
25 two issues that we are going to and that's why we need those

1 particular documents.

2 On Page -- I just had a chance to briefly look at
3 the defendant's memorandum and I'm looking on Page 4 and he
4 says: The plaintiffs never -- about halfway down it says:
5 Plaintiffs never stated --

6 THE COURT: Which memorandum --

7 MR. JONES: The present one that they just
8 submitted. Memorandum in opposition to plaintiff's motion to
9 continue defendant's motion to dismiss complaint. Page 4
10 about halfway down it says: Plaintiff never states in her
11 complaint or motion papers what state she believes to have
12 been decedent's domicile and, as I'm going back to show, that
13 if we have the will and the death certificate, we can answer
14 those questions and never shows that the law of such state
15 gives her pretermitted heir rights, despite the fact that she
16 was born before the last will -- that goes to the conflict of
17 law issue and that goes to the domicile issue as to where she
18 was domiciled. At the present time --

19 THE COURT: Wouldn't her will have been probated
20 where she was domiciled?

21 MR. JONES: At the time the will was probated, Your
22 Honor, there were no heirs of Marilyn Monroe. My client found
23 out within the last three years, two years that in fact she is
24 the daughter of Marilyn Monroe. She found that out from the
25 family. This is not somebody who is outside the family of

1 Marilyn Monroe and that entire family claiming to be Marilyn
2 Monroe's daughter. This is someone who is and always has been
3 inside the immediate family of Marilyn Monroe.

4 Our complaint states that when Marilyn Monroe was 18
5 years old, she had a baby; that she gave that baby to her
6 older sister. This is -- I mean -- we can document that much.
7 So that Marilyn Monroe's older sister raised this daughter.
8 That's in our complaint. So, everybody in that family knew --
9 I mean -- of the older people -- the aunts the uncles, the
10 grandparents -- knew that Marilyn Monroe got pregnant, she had
11 a baby and she was beginning her career. So, what happened:
12 She gives the baby to her older sister. When she had the baby
13 at Wilcox Hospital, she goes to the hospital -- when she has
14 the baby, she puts her thumbprints where it says the mother's
15 left and right thumbprints, we included that in our
16 complaints. Those thumbprints are Marilyn Monroe's
17 thumbprints. The footprints are those of Nancy Miracle, the
18 baby. Okay. The older sister then signs the birth
19 certificate as having -- claimed at that point it is her baby
20 because she is married and she already has kids.

21 So, then for the next 46 years Marilyn Monroe's
22 older sister raises the child and if you look on Page -- if
23 you look in our complaint, Exhibit A -- the second page of
24 Exhibit A -- first page is the birth certificate -- the Wycoff
25 (Phonetic) Heights Hospital, and the second page has the --

1 where it says: Right and left footprints of the baby and then
2 it says mother's left and right thumbprints.

3 We are asking the Court, basically, to treat this as
4 a paternity action -- in the nature of a paternity action
5 because, basically, what we would be requesting from the Court
6 is a DNA genetic analysis which will prove beyond a doubt --
7 99.9 percent effective -- that the tissue samples that we
8 still can take from Marilyn Monroe -- the body is buried -- as
9 I said, the body was buried -- is buried in California, it is
10 not in the ground. It's in a crypt. It would not be that
11 much of an expense for the -- as we -- we're going to propose
12 to the defendants that two physicians, forensic medicine
13 specialists, be allowed to take tissue samples from the --
14 from the body, have those compared to the blood and tissue
15 samples of Nancy Miracle and at that point we feel that there
16 would be a 99 percent probability that in fact Nancy Miracle
17 is the child of Marilyn Monroe.

18 THE COURT: Well, what about the fingerprints on the
19 birth certificate?

20 MR. JONES: The fingerprints, we can get those from
21 the -- we would need a subpoena to get those from -- let me
22 back up. Excuse me, Your Honor. Let me back up just one
23 minute.

24 It's worthy to note at this point that there is an
25 ongoing murder investigation involving this case. In

1 California at the present time the supervisors of the County
2 of Los Angeles voted in October as to whether or not they were
3 going to exhume the body of Marilyn Monroe for purposes of
4 continuing the criminal investigation; that vote fell one vote
5 short of them going -- of the county going ahead to exhume the
6 body for purposes of continuing -- to exhume the body for
7 purposes of continuing the murder investigation. I do know
8 that what we would like to do is subpoena the FBI fingerprints
9 of Marilyn Monroe, and then compare those to the fingerprints
10 and footprints that we have on the original Wycoff's hospital
11 records.

12 THE COURT: Okay. Well, let's go back to my
13 question.

14 MR. JONES: I'm sorry, Your Honor. The particular
15 question?

16 THE COURT: My question to you was: Wasn't the will
17 probated where Marilyn Monroe was domiciled?

18 MR. JONES: Your Honor, there are several cases that
19 we have that show that just cause the domicile -- the will is
20 domiciled in -- they claim that the will was domiciled in New
21 York -- I mean -- that Marilyn Monroe was domiciled in New
22 York.

23 At the time that they did the probate, there were no
24 heirs of Marilyn Monroe. There was nobody there to contest
25 the will, so they just took -- in fact, in addition that there

1 are at least two wills of Marilyn Monroe running around here --
2 that are in existence -- so, when we are asking for a copy of
3 the will from the defendants, we're asking for, as it says,
4 more than one will that is there.

5 But, yes, they went on ahead and probated the will
6 in New York, but for purposes of a pretermitted heir statute
7 we are not contesting the will. What we are saying is that
8 she is a pretermitted heir and under statutes of pretermitted
9 heir both in New York and in California, which is where we
10 believe that the law applies -- I mean -- we're leaning more
11 towards California law because she was domiciled there. She
12 was living in California for some 20 years, she owned property
13 in California, and she's buried in California. So, under the
14 law we have a right to come in and contend that even though
15 the Court says that she was domiciled in New York; that we
16 have a right to proceed -- and if I could read a case to you,
17 Your Honor, this is a case called Robins vs. Robins. It's
18 cited as -- I'm sorry. It's Robertson vs. Robertson cited at
19 803 F-two-D one three six. This is the Fifth Circuit, 1986.

20 THE COURT: 803 what?

21 MR. JONES: 803 F-two-D --

22 THE COURT: F what?

23 MR. JONES: F second.

24 THE COURT: Oh. What's the page number?

25 MR. JONES: One thirty-six. It's the Fifth Circuit.

1 Let me just read part of this. This is an action to establish
2 the decedent's domicile in Louisiana at the time of death,
3 which would give children greater rights than those granted
4 under the will, jurisdiction would not interfere with state
5 court proceedings. So, basically, where the red is, that
6 would be part of our (indicating) --

7 THE CLERK: (Document handed).

8 MR. JONES: ...that would be part of our motion in
9 opposition we're going to use that. There are other statutes
10 on there that say that what is a pretermitted heir and how can
11 a pretermitted heir -- even though the probate was going on,
12 has been completed in New York in 1962 under the pretermitted
13 heir statutes in California, we are allowed to proceed now
14 against the estate to show that pretermitted means to be left
15 out or forgotten and that we have a right to proceed on those
16 grounds.

17 Secondly, on Page 4, it's a little bit further down,
18 the defendant says plaintiff's contention that the defendant
19 may be doing some unspecified type of business in the State of
20 Hawaii is mere speculation. This is what he says: Some type
21 of business in the State of Hawaii is mere speculation and the
22 rules do not allow a claim to be brought based on mere
23 speculation, but I've just handed you what we believe is a
24 merchandising probate document that allows the estate through
25 its agents to do business here in Hawaii and we just got ahold

1 of that document. They have opened the door by bringing in
2 the probate documents and what they're doing is they're
3 bringing in one page, two pages and what we're asking the
4 Court to do is to give us an opportunity to bring in the rest
5 of the probate documents, which we'll conclusively show that,
6 yes, they're out here doing business in Hawaii. Once we've
7 done that the long arm statutes of the State of Hawaii take
8 over and say: Yes to this Court, there is jurisdiction for
9 this Court to proceed.

10 The next issue --

11 THE COURT: Wouldn't the subject matter of the
12 litigation have to arise out of the activities within the
13 state?

14 MR. JONES: Your Honor, if they are doing -- if they
15 are merchandising, we are claiming a part of the royalties of
16 the merchandising, so yes, it does arise out of -- we're
17 contending that it does arise out of the activity that they're
18 doing in the state. The activity is merchandising and making
19 money from a license.

20 THE COURT: Whether or not the plaintiff is the
21 daughter of Marilyn Monroe arises out of the fact that the
22 estate is doing business here in Hawaii?

23 MR. JONES: No, it rises out of the fact that under
24 the pretermitted heir statutes of both New York and California
25 that she was left out and a pretermitted heir has a right to

1 come in and claim a part of the estate. In fact, under the
2 statutes it's 50 percent of the estate, so Nancy Miracle is
3 claiming 50 percent of the estate of Marilyn Monroe, which is
4 in money terms.

5 MR. JONES: That's all we have, Your Honor. Thank
6 you.

7 THE COURT: What about the statute of limitations?

8 MR. JONES: Oh, I'm sorry. As to the issue of the
9 statute of limitations, Your Honor, if we would go back to the
10 conflict of law problems, the conflict of law problems go to
11 the issue of domicile and this is what we're trying to get:
12 The documents to show -- the will, the death certificate and
13 the probate documents are basically what we're after. Okay.
14 Once we've got those documents, we can then find out what
15 state law applies to the pretermitted heir statutes. We are
16 confident that we have a right to go under the pretermitted
17 heir statute. The defendants talk about --

18 THE COURT: You are suggesting that by being able to
19 discover what's contained within the probate files in New York
20 you are going to find evidence that will establish that New
21 York erroneously probated the will and that in fact Marilyn
22 Monroe was domiciled in some other state, is that what you are
23 saying?

24 MR. JONES: Not they erroneously probated the will.
25 We're not attacking the will.

1 THE COURT: No, but you're saying that you suspect
2 you're going to find that evidence that she was domiciled
3 somewhere other than New York.

4 MR. JONES: Right. Yes, Your Honor. If you look at
5 both copies of the will -- there are at least two copies of
6 the will. If you look at both of them, which we really have
7 not looked at, we're going to contend, basically, that if you
8 look at those wills, where were they made? They were made in
9 California. They were drawn up in California when she was
10 residing in California. She was domiciled in California. The
11 heir at that time did not know that she was the heir of
12 Marilyn Monroe, so, actually, there were no heirs listed and,
13 as best we can tell, Marilyn Monroe left the estate over to
14 two other people or some other people, but under the
15 pretermitted heir statutes of the State of California and of
16 New York, if we can show that she is an omitted heir 40 years
17 later, 50 years later, those people, that group of people are
18 allowed to go back and not challenge the will, not challenge
19 the probate, but they can go back under the statute and claim
20 50 materials of the estate and there are hundreds of cases
21 along those lines.

22 THE COURT: Well, getting back to my question: What
23 do you wish or anticipate that you will recover or discover in
24 the probate records in New York?

25 MR. JONES: No. 1 is the will. What does the will

1 say about -- does the will say anything at all about heirs or
2 issues, which is critical to our case? I mean, does the will
3 itself say: Well, you know, I'm -- this is what -- I'm living
4 in New York -- I mean -- I'm living in California and this is
5 what I expect to happen with my estate.

6 THE COURT: Well, that's a public record, isn't it?

7 MR. JONES: We have not been able to get ahold of
8 the certified copies of the will and of the other probate
9 documents. These documents are clearly in the control of the --
10 of the defendants.

11 THE COURT: You are saying, are you not, they're not
12 public record?

13 MR. JONES: We haven't been able to get ahold of
14 them.

15 THE COURT: Have you tried?

16 MR. JONES: We have tried. My client has tried
17 several times to get ahold of the original certified copies of
18 documents -- of the probate documents. Okay. As to -- going
19 back of your statute of limitations, the statute of
20 limitations will depend on what state law applies under the
21 pretermitted heir statute. If it's the pretermitted heir
22 statute of the State of California, there is no statute of
23 limitations problem. If the pretermitted heir statute is one
24 from New York, we, again, are going to contend that those
25 people are still allowed to come back in and claim years later

1 that they are entitled to 50 percent of the estate so that is
2 why we are asking for those documents to put them to our
3 memorandum in opposition to the defendant's motion and, again,
4 finally in conclusion, Your Honor, going back to Rule 12 it
5 says: All parties shall be given reasonable opportunity to
6 present all material and all material under the rules as we
7 are interpreting them means that we be given an opportunity --
8 we're not asking them to go through all of their records.
9 We're not asking to burden them, you know, with going through
10 a hundred or a thousand documents.

11 We're basically asking for, you know, ten, maybe 12
12 documents, which we would like to put in our memorandum in
13 opposition to their motion to dismiss to address the issue of:
14 Is there jurisdiction of the Court, which we feel there is
15 under the long arm statutes. Where was Marilyn Monroe
16 domiciled? That goes back to the will itself. Thank you,
17 Your Honor.

18 THE COURT: Thank you.

19 Mr. Yasunaga.

20 MR. YASUNAGA: Thank you, Your Honor.

21 I think it's already been recognized that although
22 under a motion for summary judgment an affidavit talking about
23 why further discovery is necessary is appropriate, that's not
24 provided for under Rule 12 and Your Honor has already
25 recognized that in a prior ruling in the California Hawaiian

1 Fund vs. Simon case, and I've attached a copy of that order.

2 And there's good reason why you don't allow
3 discovery before the motion to dismiss is decided. It's an
4 attack on the pleadings and the whole point is to give the
5 defendant a chance to show the defectiveness of the claim and
6 the complaint without having to go through burdensome
7 discovery. I don't know if Your Honor has looked at the
8 discovery requested, but it is very burdensome: Turn over all
9 bills of Marilyn Monroe, all telephone records, it's crazy.
10 On and on and on.

11 And we are entitled -- we should be given a shot to
12 get out of this without going through burdensome discovery.
13 This motion has not been turned into a motion for summary
14 judgment just because there were a couple of affidavits
15 involved. The affidavits were just to present for the Court's
16 convenience a matter of public record. This proceeding should
17 not even be in Hawaii, it should be in New York and there it
18 would be easy for the court to have access to those matters of
19 public record. We just presented it for the Court's
20 convenience, and we've presented authority -- Mac vs. South
21 Bay Beer Distributors -- that says that the Court may take
22 judicial notice of matters of public record and that inclusion
23 of such material doesn't change the motion to a motion for
24 summary judgment. So, what we have here is a motion to
25 dismiss and discovery is really not appropriate.

1 It's evident that plaintiff has not done the
2 required investigation -- pre-complaint investigation. There
3 are many things that plaintiff doesn't even know what her
4 theory will be and the motion to dismiss is aimed at those
5 deficiencies and, therefore, the motion to dismiss should go
6 forward.

7 We cited the case of McFarland vs. Memorex
8 Corporation and I was not able to get a copy for you because
9 of the shortness of time, but this is a case, Your Honor is
10 already familiar with and dealt with in that Simon case, and
11 that case, although it was a Rule 9 case, the principle there
12 was that pleadings -- requirements for proper pleadings should
13 be met before discovery occurs and one cannot ask for
14 discovery in order to meet the pleading requirements.

15 Again, our motion is aimed at attacking the
16 pleadings.

17 Your Honor agreed with this reasoning and rejected a
18 similar position to continue in order to do discovery in this
19 other case.

20 The discovery that Mr. Jones proposes will not
21 defeat the motion to dismiss. There are three different
22 grounds and I think, as Your Honor has pointed out, the long
23 arm statute and the personal subject matter jurisdiction
24 requirements provide that you can't just say the defendant is
25 doing business here. The cause of action has to arise out of

1 the contact with the state and the claim here that Ms. Miracle
2 was the daughter just does not in any way arise out of, and I
3 think that requirement should certainly not be stretched to
4 have this litigation be done here when it's clear from
5 everything Mr. Jones said the events that he wants to talk
6 about are all in New York, maybe some in California, but
7 certainly nothing here. So, they can't show that the cause of
8 action arises out of any possible contacts, therefore, a
9 motion to dismiss is appropriate. At least let us have a full
10 hearing on that issue, which does not turn on discovery at all
11 and, therefore, do not make us go through burdensome discovery
12 before even addressing that issue in the motion to dismiss.

13 There are two other grounds for the motion to
14 dismiss: Statute of limitations, Mr. Jones has not really
15 shown how this discovery he's talked about will get him around
16 the statute of limitations problem.

17 And, the third one is the substantive claim of the
18 pretermitted heir. He tries to raise this issue about
19 domicile now and it's his main arrow here. I don't think it's
20 a valid argument, but the other two reasons still exist. In
21 short, I don't think we should be bushwhacked into this
22 hearing on one day's notice to really decide these issues. He
23 should file his memorandum in opposition to the motion to
24 dismiss, we should get a chance to reply and then if at that
25 time Your Honor feels that there are material issues of fact

1 that are in dispute, then you can deny our motion to dismiss,
2 but at least let us go forward rather than bog us down in
3 burdensome discovery that's the whole intent of the motion to
4 dismiss and we should be allowed to take advantage of that
5 mechanism.

6 THE COURT: Well, the Court agrees with Mr.
7 Yasunaga.

8 MR. JONES: If it please the Court --

9 THE COURT: The Court will require plaintiff to file
10 its motion in opposition and the defendant to file their
11 supplemental brief and at that point if the Court feels that
12 further discovery or discovery is merited, the Court will
13 consider it at that time. The Court will ask you, Mr.
14 Yasunaga, to prepare the order.

15 MR. YASUNAGA: Thank you, Your Honor.

16 MR. JONES: If it please the Court, could I move the
17 Court then for an extension of time to file my memorandum in
18 opposition to the -- Mr. Yasunaga's motion to dismiss it? I
19 believe it's due in two weeks.

20 THE COURT: It's due a lot sooner than that.

21 MR. JONES: We would ask the Court --

22 THE COURT: This matter is set for hearing on
23 December 14th.

24 MR. JONES: December 14th, so today is the 24th, so
25 I guess that would be approximately that amount of time we

1 would have to file. We would ask the Court for --

2 THE COURT: When is your motion due now?

3 MR. JONES: I'm sorry, Your Honor?

4 THE COURT: When is your opposition due at this
5 time?

6 MR. JONES: It's due on -- anytime before the five
7 days before the 14th.

8 THE COURT: What's the date of --

9 THE CLERK: 18 days before.

10 MR. JONES: 18 days before.

11 THE COURT: Yeah, so it's due tomorrow?

12 MR. YASUNAGA: Your Honor, I believe the 18th day
13 fell on Thanksgiving. Maybe I'm counting wrong.

14 THE COURT: You have it as tomorrow?

15 THE CLERK: It would be tomorrow.

16 MR. JONES: Your Honor, I would also note that in
17 the record we agreed to Mr. Yasunaga's request for a 30-day
18 extension of time, and one of the documents in there is a
19 stipulation that we signed a month ago granting Mr. Yasunaga
20 and Mr. Sideman an additional 30 days with which to prepare
21 their motion, which is the motion that was going to be heard.
22 So, in fact, we stipulated with them to give them more time to
23 come forward and file their documents, so we're asking for the
24 same courtesy that -- you know -- they allow us an additional
25 30 days.

1 THE COURT: Well, you'd have to -- you both would
2 have to agree on a different hearing date if --

3 MR. JONES: Your Honor, I'm asking --

4 THE COURT: -- you are going to get a further
5 extension.

6 MR. JONES: Your Honor, what I'm moving, Your Honor,
7 is I'm saying that -- I'm asking the Court if the Court would
8 do that based on the fact that in fact we -- the Court did
9 agree that we would give them additional time, which was 30
10 days to --

11 THE COURT: Well, that was something that you worked
12 out with between the parties. You will have to ask Mr.
13 Yasunaga whether he's willing to continue the hearing date.

14 MR. JONES: (Affirmative nod).

15 THE COURT: You going to ask him or not?

16 MR. JONES: Mr. Yasunaga, could we have a 30-day
17 extension of time?

18 MR. YASUNAGA: Your Honor, I'm not authorized to
19 agree to that and let me just explain this.

20 The first extension was required because we're
21 really dealing with New York people here. The estate is in
22 New York. Any attorneys who know anything about it -- and
23 there are multiple attorneys because there are multiple
24 beneficiaries --

25 THE COURT: All right. Well, I'll give Mr. Jones an

1 extension until next Tuesday to file his opposition, and I
2 want you, Mr. Yasunaga, to prepare the order.

3 MR. YASUNAGA: Thank you, Your Honor.

4 MR. JONES: If it please the Court, I have one more
5 point. Sorry, Your Honor.

6 Your Honor, I would ask the Court to reconsider its
7 motion and allow us to orally ask the Court to reconsider its
8 present motion under the rules. Due to the length of time we
9 have a right to come forward and ask the Court to reconsider
10 the oral motion that was just made and give us ten more
11 minutes to --

12 THE COURT: You can file a written motion then. I'm
13 not inclined to grant it, though.

14 MR. JONES: I understand.

15 MR. YASUNAGA: Thank you, Your Honor.

16 (Whereupon, the proceedings recessed at 11:24 a.m.,
17 November 24, 1992.)
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I, Terrence Chun, Official Court Reporter, United States District Court, District of Hawaii, Honolulu, Hawaii, do hereby certify that the foregoing is a true and correct transcript of proceedings in Civil No. 92-00605ACK, Nancy Miracle vs. Anna Strasberg, at Honolulu, Hawaii, on November 24, 1992, before the Honorable Alan C. Kay, Chief United States District Judge.

November 25, 1992

TERRENCE CHUN, CSR NO. 114

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NA FORM 13040 (10-86)

BEFORE:

HONORABLE ALAN C. KAY
Chief United States District Judge
District of Hawaii

PEARANCES:

JOHN AARON MURPHY JONES, Esq.
1170 N. King Street
Honolulu, Hawaii

Attorney for Plaintiff
Nancy Miracle, aka Nancy
Maniscalco Green;

MILTON M. YASUNAGA, Esq.
Cades, Schutte, Fleming
& Wright
1000 Bishop Street
Honolulu, Hawaii